and convenient without any differentiation of any sort between movable and immovable property. In this connection it is not considered that any consequential directions are necessary.

B. The expenses incurred in the realisation of the movable property are not payable primarily out of the movable property but out of all the property vested in the administrators without any differentiation of any sort between movable property and immovable property.

C. The residue of the estate remaining in the hands of the administrators after payment of the debts of deceased, the estate duty and testamentary and all other administrative expenses is distributable as follows :—

(a) So much of the said residue as bears the same proportion to it as does the gross value of the immovable property which became vested in the administrators to the gross value of all the property immovable and movable which became so vested is distributable as to one-sixth share each to the applicant and the 1st respondent and as to one-third share each to the 3rd respondent and the 5th respondent.

(b) So much of the said residue as bears the same proportion to it as does the gross value of the movable property which became vested in the administrators to the gross value of all the property immovable and movable which became so vested is distributable as to one-sixth share each to the applicant and to the 1st respondent and as to a one-third share each to the 2nd respondent and the 4th respondent. The right of the applicant and the 1st respondent to such one-sixth shares is subject to the restriction that it is what is known in Hindu law as a Hindu's woman's estate but as that restriction does not vest any interest in any person no directions regarding it can properly be given in these proceedings.

D. It is directed that the distributive shares of the 4th respondent and 5th respondent when ascertained be paid or transferred to the applicant in trust for them.

E. The applicant and the 6th respondent are at liberty to distribute the residue of the estate in accordance with the directions given by the Court in this Summons.

F. No other directions regarding the administration of the estate are considered to be necessary. There will, however, be liberty to apply.

G. As regards the costs in the present proceedings, the costs of the applicant and the 1st, 2nd, 3rd, 4th and 5th respondents as taxed on a solicitor-client basis will be borne by the estate. As regards the costs of the 6th respondent, I reserve the question and will deal with it, if I am asked to do so, after hearing argument.

WARD & ANOR v. PUBLIC PROSECUTOR.

[A. Cr. J. (Storr, J.) May 9, 1953]

[J.B. — Criminal Appeal No. 16 of 1953]

Penal Code, ss. 378 and 380 — Theft — Construction of s. 378 of the Penal Code — Sentence.

"Whoever in order to take with the intention of gaining property by unlawful means moves that property, or whoever in order to take with the intention of retaining by unlawful means property which he does not intend to acquire, moved that property, or whoever moves property in order to take it with the intention of keeping the person entitled to the possession of it out of the possession of it by unlawful means, though he does not intend to deprive him permanently of it, is said to commit theft." When section 378 of the Penal Code is read in this way it is evident that it was the intention of the Legislature that it should be theft under the Code, to take goods in order to keep the person entitled to the possession of them out of the possession of them for a time, although the taker did not intend to himself appropriate them, or to entirely deprive the owner of them.

Case referred to :—

(1) *Queen-Empress v. Sri Churn Chungo* I.L.R. 22 Cal. 1021.

CRIMINAL APPEAL.

P. F. X. Leonard for the appellants.

M. Suffian (Federal Counsel) for the respondent.

Cur. Adv. Vult.

Storr, J. : — In this case the two appellants, C. H. Ward and J. H. Lea, were convicted by the learned President of the Sessions Court, Johore Bahru, of the theft of certain articles, under section 380 of the Penal Code. Mr. Leonard appeared for the appellants and Inche Suffian, Deputy Public Prosecutor, appeared for the Public Prosecutor.

The main point argued in the appeal was that the evidence tended to show that the appellants, although they admitted taking the articles, did not take them with any criminal intention. The idea in their minds at the time of taking the articles was that in due course they would get the consent from the owner and when he required the articles they would return them to him. Although Mr. Leonard argued very forcefully that the appellants acted without criminal intention and as the owner would only have been deprived of possession of the articles for a short time there could be no offence, on looking up the authorities I have come to the conclusion that there is very little substance in this

argument. Section 378 of the Penal Code defines the offence of theft as :—

"Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft."

and in that section the word "dishonestly" does not take its usual dictionary meaning but has a separate definition in section 24 of the Code. That section reads :—

"Whoever does anything with the intention of causing wrongful gain to one person, or wrongful loss to another person, is said to do that thing 'dishonestly'."

and "wrongful gain" and "wrongful loss" mentioned in section 24 are further defined in section 23 of the Code, so that as was stated by Petheram, C.J., in a judgment of the Full Bench in *Queen-Empress (on the prosecution of Kunjo Pramanick) v. Sri Churn Chungo*[1], section 378, after taking into consideration sections 24 and 23, will read as follows :—

'"Whoever in order to take with the intention of gaining property by unlawful means moves that property, or whoever in order to take with the intention of retaining by unlawful means property which he does not intend to acquire, moves that property, or whoever moves property in order to take it with the intention of keeping the person entitled to the possession of it out of the possession of it by unlawful means, though he does not intend to deprive him permanently of it, is said to commit theft." When the section is read in this way it is evident that it was the intention of the Legislature that it should be theft under the Code, to take goods in order to keep the person entitled to the possession of them out of the possession of them for a time, although the taker did not intend to himself appropriate them, or to entirely deprive the owner of them.'

which, I think, gives a true and fuller definition of the offence defined in section 378. It is therefore quite clear to me that the learned President was right in coming to the conculsion that on the evidence, even accepting that of the defence fully, the offence of theft under section 380 of the Penal Code had been committed by the appellants, and I do not think that the question of delay in bringing the case to trial or of the failure to produce the evidence of the late Police Lt. Cothwra or Mr. Strathairn in any way prejudiced the appellants' case.

Having decided that the conviction of the appellants was correct, I now have to consider the question of sentence. The learned President considered this question very fully and stated that the appellants were police officers and "As police officers they have a duty to protect the subjects' property especially when such property had to be momentarily left behind to meet the need of the Emergency Laws. I consider that they have not only failed in this essential duty but that they have abused the powers given to them." Although I consider that everything he says is substantially correct, the fact that the appellants had only been in the police force for a little over 5 months and presumably had very little police training and are young men with previously good records in their service careers (Ward was in the R.A.F. when he did his National Service and Lea was, until he joined the police in September, 1951, a Sgt. in the 4th Queen's Own Hussars and had been fighting the bandits from 1948 in this country) and the fact that they must of necessity lose their employment, I consider, in this particular case, the sentence of six months imprisonment, without any option of paying a fine, imposed by the learned President to be excessive. In the special circumstances of this particular case, had the appellants not been members of the police force I should have considered dealing with them under section 294 of the Criminal Procedure Code, but as they are members of the police force I am unable to take that course; however, because of their youth and their good records, I consider a sentence of one day's imprisonment and a fine of $500 each, in default six months' imprisonment, would adequately meet the case. The appeal will be dismissed but the sentences will be altered accordingly.

Appeal dismissed.

LEONG KANG CHANG v. PUBLIC PROSECUTOR.

[A. Cr. J. (Briggs, J.) March 23, 1953]

[K.L. — Criminal Appeal No. 21 of 1953]

Criminal trial — Sentence — Assessing sentence on an accused who has broken his bond by committing another offence — Consideration of Court.

The appellant was in the first place convicted of possession of a substantial quantity of chandu and implements for smoking chandu. The learned President bound him over for six months in the sum of $500 with one surety. Just before the bond had expired, the appellant was again arrested and charged with consumption of chandu, and permitting the use of premises for the consumption of chandu. Of these two charges, the first was stayed under section 171 of the Criminal Procedure Code, and on the second charge he was fined $500, or in default four months imprisonment. After this second conviction the accused was called on to come up for judgment under the bond. He could give no good reason for his breach of bond and was sentenced to four months rigorous imprisonment. On appeal against the sentence, —

Held: (1) when assessing sentence on an accused who has broken his bond by committing another offence the Court should not take into consideration the second offence but look back to the offence for which the accused was bound over, and sentence as for that offence in the circumstance which then obtained; (2) estreatment of a bond is merely an excuse for fining in addition to any other sentence imposed which, if imprisonment, should be avoided except where the offence is both punishable by imprisonment and fine.

CRIMINAL APPEAL.

A. J. Bostock-Hill for the appellant.

G. C. Byrne (Federal Counsel) for the respondent.